

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Marine Polymer Technologies, Inc.

v.

Civil No. 06-cv-100-JD

HemCon, Inc.

O R D E R

The parties filed claim construction briefs and responses to the briefs. Marine Polymer moves for leave to file a reply to address issues raised in HemCon's response. HemCon objects to Marine Polymer's motion.

Local Rule 7.1(e)(2) requires parties to move for leave to file a reply in the context of a nondispositive motion. In general, leave to file a reply is limited to providing an opportunity to respond to new factual or legal arguments raised for the first time in the opponent's objection or response. See, e.g., Hypertherm, Inc. v. Am. Torch Tip Co., 2008 WL 461033, at *1 (D.N.H. Oct. 16, 2008).

In support of its motion for leave, Marine Polymer states that it intends to respond to new arguments raised for the first time in HemCon's response to Marine Polymer's claim construction brief. The proposed reply addresses HemCon's judicial estoppel theory, the issue of whether claim construction is dispositive, and HemCon's theory that a protein limit is required. HemCon,

contends that Marine Polymer's motion should be denied because the court provided a claim construction schedule that allowed only claim construction briefs and responses to the briefs so that Marine Polymer is barred from seeking leave to file a reply. HemCon represents to the court that its response did not include any new arguments and contends that Marine Polymer is seeking leave to brief new arguments.

The local rules provide for a motion for leave to file a reply. More importantly, contrary to its representation to the court, it appears that HemCon did not raise judicial estoppel, the issue of dispositiveness, or a protein upper limit requirement in his claim construction brief. Those arguments, however, were addressed in its response to Marine Polymer's brief.

Therefore, Marine Polymer seeks leave to address arguments raised in HemCon's response, which is an appropriate basis for leave to file a reply.

Conclusion

For the foregoing reasons, the plaintiff's motion for leave to file a reply (document no. 139) is granted.

HemCon is granted leave to file a **one-page statement** limited to citing, without argument, the pages and lines in its claim

construction brief (document no. 134) that address the issues of judicial estoppel, dispositiveness, and a protein upper limit requirement, **on or before June 17, 2009**, failing which, the court will consider Marine Polymer's reply in its entirety.

SO ORDERED.

/s/ Joseph A. DiClerico, Jr.
Joseph A. DiClerico, Jr.
United States District Judge

June 12, 2009

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